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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of) MM DOCKET NO. 92-201
)
Order to Show Cause)
Directed Against)
)
Mario J. Gabelli)
and)
Gabelli Funds, Inc.)

To: Chief Administrative Law Judge
Joseph Stirmer

**MASS MEDIA BUREAU'S COMMENTS ON MOTION FOR
CLARIFICATION OF ORDER TO SHOW CAUSE**

1. On September 4, 1992, Mario J. Gabelli and Gabelli Funds, Inc. (collectively referred to as "Gabelli"), filed a Motion for Clarification of the Order to Show Cause, FCC 92-377, released August 21, 1992 ("Order"). The Mass Media Bureau submits the following comments.

2. At the prehearing conference held on September 9, 1992, counsel for the Bureau discussed the issues raised by Gabelli in its Motion for Clarification. While not intending to reargue the matters addressed at the conference, the Bureau will briefly state its position on the matters raised in the Motion for Clarification. Gabelli states that the Order does not invoke the forfeiture provisions of Sections 503(b)(3) or 503(b)(4) of the Communications Act of 1934, as amended. The Bureau agrees with this assessment of the Order. As Gabelli correctly notes, before the Commission can issue a Notice of Apparent Liability pursuant to Section 503(b)(4) or determine a forfeiture penalty after notice and opportunity for hearing pursuant to Section

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503(b)(3), it must comply with the provisions of Section 503(b)(5) for nonlicensees such as Gabelli. Section 503(b)(5) requires that the Commission send a citation of the violation charged and provide the alleged wrongdoer with a reasonable opportunity for a personal interview with an official of the Commission. Only if the person subsequently engages in conduct of the type described in the citation can the Commission proceed with the forfeiture provisions.

3. The Bureau disagrees with Gabelli's opinion that the Order does not constitute an adequate citation of violation charged pursuant to Section 503(b)(5) of the Act. Paragraph 2 of the Order sets forth the media holdings of Gabelli of which the Commission was aware at the time of the Order. Paragraph 3 of the Order clearly states that Gabelli's media holdings are in violation of the provisions of Sections 73.3555 and 76.501(a) of the Commission's Rules and Section 613 of the Communications Act of 1934, as amended. This information adequately apprised Gabelli of the rule and statute provisions which the Commission believed he was violating.

4. Gabelli has also been afforded an opportunity to meet with an official from the Commission to further explain to him the rules and statutes he is believed to be violating. The Bureau will make such an official available to meet with Gabelli at a time and place that is mutually agreeable.

5. Finally, Gabelli's attempt to condition any forfeiture proceeding on the outcome of the cease and desist proceeding

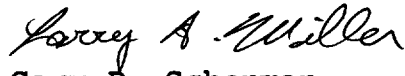
should be rejected. The Commission has authority to pursue various enforcement actions. Gabelli has cited no precedent which would preclude the Commission from pursuing different enforcement proceedings concurrently. Accordingly, there would be no need to wait for the issuance of a cease and desist order before beginning a forfeiture proceeding.

6. In view of the foregoing and the discussions at the prehearing conference, the Bureau requests the Presiding Judge to clarify the Order to the extent indicated by the Bureau.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Larry A. Miller


for Gary P. Schonman
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

September 11, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 11th day of September, 1992, sent by regular United States mail, U.S. government frank, copies of the foregoing "Mass Media Bureau's Comments on Motion for Clarification of Order to Show Cause" to:

Alan Y. Naftalin, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Michelle C. Mebane
Michelle C. Mebane